



INVESTIGATION TASK FORCE

IRREGULARITIES IN THE PROCUREMENT OF INFORMATION TECHNOLOGY AT THE KOSOVO ENERGY CORPORATION

(ITF Case File 275/07)

I. INTRODUCTION

1. Pursuant to the United Nations Interim Administration Mission in Kosovo (UNMIK) Executive Decision No. 2003/16, the Investigation Task Force (ITF) responded to several allegations concerning the "Korporata- Energjetike e Kosovës" (Kosovo Energy Corporation – KEK.)
2. Specific to Case File 275/07, ITF Investigators were informed by Nehat Hasani, Information Technology (IT) Manager in KEK, that some irregularities may have taken place in the procurement of the company "Komtel Project Engineering" for the supply of computer hardware and software for KEK in 2001. Additional information received was that Komtel also designed and implemented the KEK Central Accounting System (CAS) and the Customer Care Package (CCP.) Both systems were carried out by Komtel in corporation with the Italian company Datamat S.p.A.

II. BACKGROUND INFORMATION

3. KEK is a Publicly Owned Enterprise (POE), an economy market terminology to define a company whose only owner and administrator is the state through its own officials. UNMIK administration endeavored, through its competent branches, the implementation of the incorporation process, re-structuring the company according to economy market standards. KEK has been the local and sole energy supplier for the Kosovo market since the Security Council of the United Nations mandated UNMIK in 1999, by Resolution 1244, to provide the Serbian Province with an Interim Administration. Although operating in a monopoly environment and being heavily subsidized by the contribution of various donors, the Company has never been able to supply sufficient electricity to meet the local demand on a permanent basis, with numerous power cuts, more frequent during the winter seasons, since the greatest part of the housing heating relies on electricity.



III. APPLICABLE LAWS

4. See Annex 1.

IV. METHODOLOGY

5. ITF Investigators conducted the investigation in accordance with UNMIK Executive Decision No. 2003/16. Investigators collected documents from KEK, the European Agency for Reconstruction (EAR), the United States Agency for International Cooperation (USAID), the Central Fiscal Authority (CFA) the Business Registration Agency of Kosovo and external auditor's reports. All pertinent documents relevant to the investigation were translated from Albanian to English. Interviews of relevant witnesses and KEK employees of KEK were also conducted. All evidence adduced was then assessed for any possible violations of the Provisional Criminal Code of Kosovo and applicable administrative procedures pertaining to the European Union Rules and Regulations.

V. INVESTIGATIVE DETAILS

6. ITF investigators examined all EAR documentation relevant to the CAS tender.
7. The project was funded by EAR for KEK in 2001. The deadline for the tender was 12 February 2001 and in consideration submissions from four separate companies, was eventually awarded to Datamat S.p.A. and Komtel on 02 May 2001.
8. The CCP was funded by USAID and commenced in August 2003 within the so-called "Institutional Strengthening of the Kosovo Electric Corporation" project. The CCP was developed for tracking billings and collections over the whole electrical distribution network of KEK with more than 400,000 electric energy meters.
9. According to the EAR contract list, Komtel has not only supported IT hardware and software to KEK, but also other products in electrical engineering and automation. Beside the contract for implementation of the CAS in KEK on 02 May 2001 for €2,868,800.89, EAR awarded to Komtel contracts on 15 December 2001 for the supply of steel ropes for coal mines (€91,002.00), on 24 November 2003 for administrative and technical IT equipment for coal mines Bardh and Mirash (€367,376.00), on 12 May 2006 for supply of IT equipment for the Association of Kosovo Municipalities (AKM) and Municipalities (€149,150.00) and on 12 May 2006; Border Police equipment (€1,218,340.00.)



10. ITF Investigators reviewed the Business Register of Kosovo. Under ID No 70035611, Komtel Project Engineering changed into Komtel Project Engineering Sh.p.k – a Limited Liability Company - on 07 August 2003. The owner is listed as Mr. Vegim Gashi, d.o.b. 11 September 1963. The Authorized Director is Agon Baruti, d.o.b. 27 March 1964. There are seven employees registered with the company.
11. According to the Business Register of Kosovo, ID No 80116454, Komtel Project Engineering was founded on 11 July 2000 and registered on 01 August 2000. According to the 'Cash Flow Review' on KEK dated 20 June 2002, auditors of PriceWaterHouseCoopers found that the website www.vuinfovudic.co.yu contained information to indicate that Komtel was originally established in 1994, listing its owners as Vegim Gashi and Fadil Ismajli. The website also listed Mr. Ismajli as being the General Manager for the company.
12. ITF found that Mr. Ismajli was Commercial Director and then Acting Chairman of the Executive Board of KEK until 20 June 2002 and Mr. Gashi was a member of the Supervisory Board of KEK until 13 June 2002.
13. On 01 August 2005, Fadil Ismajli became Executive Director for Transmission & Dispatch in KEK and in December 2006 he became Managing Director of the incorporated company "Transmission System and Market Operator JSC (KOSTT)".
14. According to the contents of a report by the Kosovo Trust Agency's (KTA) Internal Audit Unit dated 15 June 2006, there were a lot of irregularities regarding the completion of procedures and internal controls in the administrative organization around the CAS packages, e.g.: KEK did not have a specific cost accounting system in place, so there was no appropriate cost analysis conducted by the KEK top management. According to the Operational Review for KEK for the year 2002 by Deloitte Touche Tohmatsu (DTT), internal standards about the software quality were missing. Special procurement procedures regarding IT outsourcing and internal methodologies related to the problem management and system development in the CAS project were not in place. There were no previous purchases and users of this software so a proper valuation could not have been conducted. In addition, the introduction of CAS packages was delayed due to the late delivery by Komtel. There were also irregularities in other IT procurement procedures with KEK and in the CCP package, which was implemented in August 2002 with the effect of raising the number of customers in the database from 210,000 to some 320,000.
15. On 22 and 27 March 2007, the European Agency for Reconstruction provided documents relating to five different contracts. Among them, ITF focused its attention on the Implementation of a Computerized Accounting System in KEK, dated 02 May



2001 for €2,868,800.89 with Datamat S.p.A., No: 00KOS/09/01/003; KEK-SCR-E/111651/D/S/KOS.

16. On 18 May 2007, ITF received a letter from the European Agency for Reconstruction, dated 15 May 2007 and signed by Thierry Bernard-Guele, Head of Operational Centre in Pristina. According to the enclosed 'Note To The Head Of Centre' dated 27 April 2007, signed by Lendita Gashi, Evaluator, and Luisa Lopez, Chairperson of the Evaluation Committee, there are irregularities in the tender documents of Areva/Komtel for "Replacement of Relay Protection in the Transmission Substations Kosovo B and Pristina 4". As a result, the two companies, Areva SA and Komtel, were found to be technically not in compliance with the requirements of the tender in question (see Annex 2).

VI. FINDINGS

17. ITF Investigators have established Findings in relation to the following three sectors:

A. Analysis of documents related to the tender procedures at issue

18. ITF investigators found following irregularities in the procurement procedures for the implementation of a Computerized Accounting System in KEK, contract No 00KOS/09/01/003; KEK-SCR-E/111651/D/S/KOS.
19. As stated in the evaluation report the companies Ingra Co. (J. Ludviger), DTT, Elasag and Datamat S.p.A. applied for the tender. Deadline was 12 February 2001, 16:00 hours. According to the receipts for transmitting the tender application documents, there is no receipt for Datamat. A receipt for Komtel was issued for 1 parcel on 12 February 2001, 15:10 hours, signed by Gashi (first name not readable) as tenderer and by Mimoza Selimi as receiving person.
20. According to the offer dated 12 February 2001, Datamat and Komtel build a joint-venture. The bank guarantee is issued by the San Paolo IMI S.p.A., Rome, to Datamat Ingegneria dei Sistemi S.p.A., Rome.
21. As per the conditions of the supply contract award notice, the winner of this tender was Datamat S.p.A, Rome, Italy.
22. The members of the panel for the a/m tender, involved in that evaluation process obviously, did not know which company is in the end candidate of the said procedure. The offer was submitted by the owner of 'Komtel', Mr. Gashi. The offer was signed by 'Komtel' and 'Datamat', which have built the joint-venture called 'Datkom' in



the 'Technical and Financial Evaluation' dated 14 February 2001, a company in the name of 'Datacom' is mentioned, which does not exist. This means that the Evaluation Board evaluated a wrong company and awarded the contract to the non-existing company 'Datacom'. At least the contract was signed between EAR and Datamat S.p.A., for and on behalf of the contractor 'Datkom'.

B. Analysis of the position of Komtel's key-role persons involved.

23. According to the evaluation report of EAR dated 22 February 2001, among the persons of the Evaluation Board for the tender regarding the implementation of the KEK's Computerized Accounting System, there was Fadil Ismajli as KEK Voting member. Ismajli (also written as 'Ismaili') and the other members had to sign a declaration of impartiality and confidentiality. He declared that there are no links to the tenderer, individuals or subcontractors.
24. A conflict of interests is suspected, as Ismajli, former Commercial Director and Acting Chairman of the Executive Board of KEK, stated in the 'KEK Cash Flow Review' of PriceWaterHouseCoopers dated 20 June 2002 that he was used to be a 'business partner' of Komtel. PriceWaterHouseCoopers understood that this means he used to own this company. He said that before he started working for KEK in October 1999 he discontinued this relationship, although he also mentioned that he knew the current owner of Komtel very well. Komtel was registered in the company register of the Central Fiscal Authority on 01 August 2000. In addition, the website (www.yuinfovudic.co.yu) shows that Komtel was originally established in 1994. This lists its owners as Vegim Gashi and Fadil Ismajli, and states that the General Manager was Ismajli. Therefore Ismajli may be connected to Komtel and its owner Vegim Gashi, a former member of the Supervisory Board of KEK. According to the Business Register of Kosovo, ID No 70035611, Komtel Project Engineering changed on 07 August 2003 into Komtel Project Engineering Sh.p.k, a Limited Liability Company. Owner is Vegim Gashi; Director is Agon Baruti.
25. On 02 October 2007, Fadil Ismajli was interviewed as regards his role in Komtel and KEK. He confirmed his past work experience in Komtel and he stated that KEK's Executive Board was informed of this aspect, his assignment as member of the Evaluation Committee in 2001 for the "Implementation of the Computerized Accounting and IT System" tender (then awarded to Komtel), thanks to the contents of his résumé/CV sent to them. Moreover, Mr. Fadil Ismajli admitted having been a member of the a/n Committee. He pointed out that the main responsibilities for the evaluation at issue were in charge of other external members (e.g. some UNMIK, EAR and Electricité de France/EDF's representatives).



C. Specific and technical aspects.

26. It is clear that Komtel, which was only a small company with seven employees and obviously not in the situation to undertake extensive IT supplies, was put in front of the contractor Datamat. It was suspected that the IT procurement procedures within KEK had been over ruled in order to favour Komtel. The conflict of interests between KEK's rules was also highlighted by PriceWaterHouseCoopers, which was asked by Jan Reutergardh, Team Leader for SwedPower, to investigate the purchase of two servers in 2001. Reutergardh has told that there are concerns that Ismajli is connected to Komtel and that the decision to use this supplier was biased because of this relationship. In the course of the investigations on this transaction, they also became aware of another IT supplier selection process for the purchase of a computer and telephone system, which resulted in Komtel being chosen to install the system.
27. The final report "Korporata Energjetike e Kosovës ("KEK") cash flow review" by PriceWaterHouseCoopers, dated 20 June 2002, also contained allegations against Fadil Ismajli as responsible KEK manager for energy trades being involved in several dubious contracts for import and export of electricity.

VII. CONCLUSIONS

28. In view of the evidence obtained it has been determined that there has been no fair competition in the procurement processes involving Komtel and KEK.
29. The evidence obtained has also directly implicated Mr. Fadil Ismajli as being in violation of Article 4.3. of the Finance Administrative Instruction No 2/1999. Notwithstanding, taking into consideration not only the contents of the Instruction but also 'The conflict of interest rules for KEK's Executive Board' (Section 2) and its linked "Declaration by members of Executive Board" (signed for KEK in 2005) and "Declaration by impartiality and confidentiality" (signed for EAR in 2001); Mr. Ismajli would have had to declare expressly his past experiences in Komtel. In this regard the policies and procedures in place are poorly worded and do not sufficiently identify Mr. Ismajli's previous involvement with the company as being a conflict of interest.
30. During the course of its investigation ITF recognized that there are technical aspects related to the production of electricity in Kosovo which warranted further inquiry. A technical evaluation was considered by the ITF but a comparative analysis in relation to the logistical, political and record inventories associated to the Kosovo conflicts simply made any such consideration cost prohibitive and as a result, not feasible.



VIII. RECOMMENDATIONS

31. ITF offers the following recommendations:

Recommendation No. 1: ITF recommends that the SRSG/UNMIK take appropriate action to review the conflict of interest regulations outlined in Finance Administrative Instruction No 2/1999 in order to address current deficiencies; and

Recommendation No. 2: ITF recommends that SRSG/UNMIK intervene to establish clear rules concerning the composition of the Evaluation Committees in tenders interesting at any rate Public Funds.